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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/780,783	02/18/2004	Alex Krister Raith	4015-5196	2741
24112 7590 07/11/2007 COATS & BENNETT, PLLC 1400 Crescent Green, Suite 300 Cary, NC 27518			EXAMINER NGO, NGUYEN HOANG	
			ART UNIT 2616	PAPER NUMBER
			MAIL DATE 07/11/2007	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/780,783

Applicant(s)

RAITH, ALEX KRISTER

Examiner

Nguyen Ngo

Art Unit

2616

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 18 February 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 42-53 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 42-53 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION***Double Patenting***

1. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

2. Claims 42, 43, 44, 46, 47, 48, 49, 51, and 53 provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 27, 28, 29, 30, 31, 32, 33, 35, and 37 of copending Application No. 10/781,068 (US 2004/0160901). Although the conflicting claims are not identical, they are not patentably distinct from each other because the conflicting claims pertain comparable subject matter.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

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3. Claim 53 is rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claim 76 of U.S. Patent No. 6760311. Although the conflicting claims are not identical, they are not patentably distinct from each other because claim 53 states reduced transmission power whereas claim 76 states reduced transmission rate. It is well known in the art that transmission power may be reduced by reducing the transmission rate.

Claim Rejections - 35 USC § 102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

5. Claims 42-46, 48 and 53 are rejected under 35 U.S.C. 102(e) as being anticipated by Funk (US 6169884), hereinafter referred to as Funk.

Regarding claim 42, Funk discloses a transceiver (apparatus for reducing power in radio transmitters, abstract) comprising:

a transmitter for transmitting information over an air interface at a transmission rate (radio 101 of figure 1 consisting of antenna 113 that radiates an amplified transmission signal, col3 lines 30-40 and figure 1);

a temperature measuring device for determining a temperature of said transceiver (the thermistor 115 of figure 1, col3 lines 13-53); and

a processor (processor 109 of figure 1) coupled to said transmitter and said temperature measuring device, said processor configured to compare said measured temperature with a threshold temperature (a high temperature threshold, col3 lines 40-67) and selectively reduce a transmission power level associated with a transmission originating from said transceiver based on said comparison (control transmission power, col3 lines 46-67).

Regarding claim 43, Funk discloses the transceiver of claim 42, further comprising an output device associated with said transceiver for providing an indication of said measured temperature (display 117 of figure 1, col3 lines 30-67).

Regarding claim 44 and 45, Funk discloses the transceiver of claim 42, wherein said processor is further configured to respond to transmit power control commands (col3 lines 30-37 and col4 lines 30-43).

Regarding claim 46, Funk discloses the transceiver of claim 45, wherein said processor is further configured to request said transmission rate reduction prior to implementing said transmission rate reduction (col3 lines 30-37 and col4 lines 30-40).

Regarding claim 48, Funk discloses the transceiver of claim 42, wherein said processor is further configured to cause said transmit power and said transmission rate to be reduced when said measured temperature exceeds said threshold temperature (col3 lines 30-65).

Regarding claim 53, Funk discloses a mobile station (reducing heat buildup within a mobile radio device having a radio transmitter, abstract) comprising:

means for measuring a temperature level in said mobile station (the thermistor 115 of figure 1, col3 lines 13-53);

means for reducing a transmission power associated with information transmission from the mobile station responsive to said measured temperature level (control transmission power, col3 lines 46-67); and

means for providing an indication of said reduced transmission power (display 117 of figure 1, col3 lines 30-67).

Claim Rejections - 35 USC § 103

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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7. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

8. Claims 47, 49, 50, 51, and 52 are rejected under 35 U.S.C. 103(a) as being unpatentable over Funk (US 6169884), hereinafter referred to as Funk.

Regarding claim 47, 49, 50, 51, 52, Funk fails to specifically disclose causing an indication of said transmission rate reduction to be transmitted. Funk however discloses that a user may be apprised of temperature readings by means of a graphical display (col3 lines 45-51). It would have thus been obvious to a person skilled in the art at the time the invention was made to inform users of changes in transmission rates as well as transmission power. It would have further been obvious to display such readings as a percentages pertaining to maximum transmission power of the transceiver (radio device) and maximum transmission power allowed the radio communication system since it is beneficial to a mobile user as what to anticipate when information related to reduction in data transmission is provided.

Conclusion

9. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

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a) Gilbert et al. (US 5519886), Method and Apparatus For Controlling Device

Temperature During Transmissions.

b) Choi (US 5603101), Method of And Apparatus For Displaying Temperature On A

Radio Telephone.

c) Ohno (US 5774784), Temperature Control System for Electronic Apparatus.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Nguyen Ngo whose telephone number is (571) 272-8398. The examiner can normally be reached on Monday-Friday 7am - 3:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Wing Chan can be reached on (571) 272-7493. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

NN
Nguyen Ngo

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Sumner
8/8/2616